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Connolly Bove Lodge & Hutz
1990 M Street, N.W. Suite 800
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OFFICE OF PETITIONS

In re Application of
Rappy et al.
Application No. 09/811,538
Filed: March 20, 2001
Attorney Docket No. 22001-00005-US

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: DECISION HOLDING PETITION IN
: ABEYANCE
:
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) and 37 CFR 1.702-1.705" filed October 12, 2004. Applicants request that the patent issuing from the above-identified patent application be afforded a patent term adjustment of one hundred and forty-seven (147) days. The sole basis for this request is the Office taking in excess of three years to issue the patent.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which

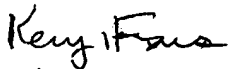
overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The office also notes that at the time of the mailing of allowance, the amount of PTA is zero (0) days with zero days of administrative delay and thirty-seven (37) days of applicant delay for three responses of more than three months. See 37 CFR 1.704(b). Accordingly, the Office delay after the mail date of the notice of allowance must be at least 37 days more than applicant delay to receive PTA at the time of the issuance of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. Any Office delays in issuance of the patent more than four months past the payment of the issue fee and more than three years after the filing date will be provided for in the issuance notification letter mailed prior to the issuance of the patent.

Telephone inquiries specific to this matter should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at (571) 272-7757.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Pair calculation